

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALVIN LESLIE WITHERSPOON,

Plaintiff,

vs.

BERNARD WARNER, et al,

Defendants.

No. 12-cv-5163-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION

BEFORE THE COURT for resolution is the Report and Recommendation entered November 15, 2013, **ECF No. 65**, recommending Defendants' motion for summary judgment, ECF No. 39, be granted. Plaintiff timely objected and Defendants responded. ECF No. 66, 67.

Plaintiff's first objection states an inmate must show deliberate indifference to serious medical needs to maintain a viable Eighth Amendment claim. ECF No. 66 at 1. He is correct. As indicated in the report, Plaintiff's serious medical needs were adequately treated. Although he disagrees with the treatment provided, including the refusal to provide narcotics, Plaintiff's disagreement with medical opinions does not amount to deliberate indifference. *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012), citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Plaintiff fails to show that the course of treatment the doctors chose was medically

1 unacceptable under the circumstances and chosen “in conscious disregard of an
2 excessive risk to plaintiff’s health.” *Snow*, 681 F.3d at 988 (internal citations
3 omitted). Here, doctors have found further surgery not medically necessary at this
4 time due to Plaintiff’s relatively young age and two prior surgeries at the same site.
5 ECF No. 65 at 6-7. Plaintiff’s remaining objections contend the magistrate judge
6 failed to apply the correct summary judgment standard and there are genuine issues
7 of material fact making summary judgment inappropriate. ECF No. 66 at 3. These
8 objections are groundless.

9 After review, the Report and Recommendation, ECF No. 65, to grant
10 Defendants’ Motion for summary judgment, ECF No. 39, is **ADOPTED in its**
11 **entirety**.

12 **IT IS FURTHER ORDERED**

- 13 1. Defendants’ Motion for Summary Judgment, ECF No. 39, is GRANTED.
14 2. The motion to strike, ECF No. 60, is denied.
15 3. The complaint is dismissed with prejudice.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
17 Order, forward uncertified copies to the parties and Magistrate Judge Hutton, and
18 **CLOSE** the file.

19 DATED this 11th day of December, 2013.

s/Robert H. Whaley

ROBERT H. WHALEY
SENIOR U. S. DISTRICT JUDGE